

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

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|---------------------------------------|---|----------------------|
| JAMES D. CUNNINGHAM, | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | CIVIL ACTION NO. |
| | : | 1:13-CV-3273-TWT-WEJ |
| | : | |
| CHASE MANHATTAN | : | |
| MORTGAGE CORPORATION, <u>et al.</u> , | : | |
| Defendants. | : | |

FINAL REPORT AND RECOMMENDATION

This matter is before the Court on the Notice of Removal [1] filed by plaintiff, James D. Cunningham. For the reasons stated below, the undersigned **RECOMMENDS** that this matter be **REMANDED** to the Superior Court of Cobb County, Georgia.

On June 4, 2012, plaintiff brought an action against defendants in the Superior Court of Cobb County, Georgia, asserting various causes of action in connection with a foreclosure on his residential property. (See Compl. [1-1].) Plaintiff subsequently removed the case to this Court. (See Notice of Removal.) Plaintiff contends that the Court has jurisdiction over the case pursuant to 28 U.S.C. § 1331 (Notice of Removal ¶¶ 2-4).

The federal removal statute provides that

[A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

28 U.S.C. § 1441(a). The statute's text explicitly restricts the right to remove to defendants. A plaintiff cannot remove a state court action to federal court, regardless of whether this Court has original jurisdiction. See Harpagon Co. v. FXM, P.C., 653 F. Supp. 2d 1336, 1341 (N.D. Ga. 2009) ("As the plaintiff is the master of the complaint and may choose to bring his action in any court having jurisdiction over it, removal by a plaintiff to federal court of an action he chose to file in state court is improper."). Here, removal was improper because plaintiff, not defendants, filed a notice of removal with this Court.¹

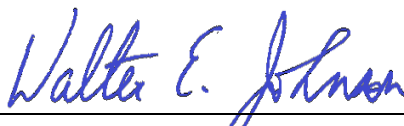
IV. CONCLUSION

For the reasons set forth above, the undersigned **REPORTS** that plaintiff did not have a lawful basis for removal of the action, and **RECOMMENDS** this case be **REMANDED** to the Superior Court of Cobb County, Georgia.

¹ The undersigned offers no opinion on whether the Court has original jurisdiction over this matter.

The Clerk is **DIRECTED** to terminate the reference to the undersigned Magistrate Judge.

SO RECOMMENDED, this 7th day of October, 2013.



WALTER E. JOHNSON
UNITED STATES MAGISTRATE JUDGE